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14 Proposed Attorneys for Debtor and Debtor-in-Possession
15 MI PUEBLO SAN JOSE, INC.

16 UNITED STATES BANKRUPTCY COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 In re:

20 MI PUEBLO SAN JOSE, INC.,
21 Debtor.

22 Case No. 13-53893-ASW

23 Chapter 11

24 Date:

25 Time:

26 Place: Courtroom
27 280 South First Street
28 San Jose, California

29 **MOTION FOR ORDER AUTHORIZING DEBTOR TO**
30 **(I) CONTINUE PRE-PETITION CASH MANAGEMENT PRACTICES AND**
31 **(II) MAINTAIN ITS CREDIT CARD MERCHANT PAYMENT SYSTEM**

32 1. Mi Pueblo, Inc., a California Corporation, Mi Pueblo and debtor in
33 possession in the above-captioned bankruptcy case ("Mi Pueblo"), hereby submits this

34 **MOTION FOR ORDER AUTHORIZING CASH-MANAGEMENT AND CREDIT CARD MERCHANT**
35 **PAYMENT SYSTEMS**

1 motion (the "Cash Management Motion") for an order (i) authorizing Mi Pueblo to
2 continue its pre-petition cash management system, including the use of its existing bank
3 accounts, (ii) authorizing Mi Pueblo to maintain its credit card merchant payment
4 system, including compelling certain credit card companies to continue merchant
5 services, and (iii) continuing to use its current business forms.
6

7 2. This Cash Management Motion is based on the Memorandum of Points
8 and Authorities set forth herein, and is supported by the accompanying declaration of
9 Juvenal Chávez. By separate application, Mi Pueblo requested a hearing on this matter
10 on shortened notice to parties in interest. In support of the Cash Management Motion,
11 Mi Pueblo respectfully represents the following:
12

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. JURISDICTION AND VENUE**

15 3. Mi Pueblo continues to operate its businesses and manage its assets as
16 debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. This Court has
17 jurisdiction over these Chapter 11 cases (these "Cases") under 28 U.S.C. §§ 157 and
18 1334. This Motion constitutes a core proceedings under 28 U.S.C. §157(b)(2). Venue
19 of this case is proper in this District under 28 U.S.C. §§ 1408 and 1409.
20

21 **II. FACTUAL BACKGROUND**

22 **A. History:**

23 4. Mi Pueblo was started in 1991 when Juvenal Chávez opened his first
24 5,000 square foot store called "Country Time Meats." Over the following 22 years, Mr.
25 Chávez has built the first store into a chain of supermarkets serving the Hispanic
26 community. Mi Pueblo has twenty-one stores: fifteen in the Bay Area, three in the
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1 Central Coast and three in the Central Valley. Mi Pueblo also maintains a warehouse
2 and distribution center in Milpitas, offices in San Jose, and a workshop and storage
3 facility. In the year 2012 Mi Pueblo had annual sales of over \$350 million.

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5 Mi Pueblo has a unique place in the communities in which it has stores, doing business
6 in under-served locations that have been abandoned by large market grocery chains
7 and in locations that otherwise do not have access to full service groceries providing
8 wholesome foods and fresh fruits and vegetables. Mi Pueblo staffs its stores with
9 bilingual employees and stocks merchandise geared to the Hispanic buyer, but also
10 serves the broader community providing full service grocery merchandise to
11 communities in which such items are not generally available

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13 5. Mi Pueblo's stores offer a unique shopping experience to the underserved
14 Hispanic community by providing a friendly, upscale environment with familiar brand
15 names, including brands imported from Mexico, Central and South America. The stores
16 also provide marinated cuts of meat, creamerias with specialty cheeses from throughout
17 Central and South America, tortillerias that make fresh tortillas throughout the day, and
18 delis that provide made-to-order Hispanic dishes.

19 6. Mi Pueblo's founder Juvenal Chávez has been recognized in the grocery
20 business for his deep commitment to providing needed service to the Hispanic
21 community, and has received the Hispanic Business Excellence Award, the award for
22 Outstanding Community Enterprise from the National Grocer Association, and the
23 award for Outstanding Independent Business from Progressive Grocer. Mi Pueblo has
24 over 3,200 employees and is the fastest growing independent supermarket chain in
25 Northern California.
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2 7. Mi Pueblo has also demonstrated a commitment to serving the community
3 through philanthropy. From raising over \$100,000 to assist victims of the Haiti
4 earthquake to starting their own scholarship program providing much needed
5 assistance to students who are attempting to turn their dreams of a college education
6 into reality. From 2012-2013, Mi Pueblo distributed over \$550,000 in scholarships to
7 students throughout the communities they serve.

8 8. Mi Pueblo is current on all obligations to employees, suppliers and all of its
9 creditors, including its secured creditors. Mi Pueblo's current financial circumstances
10 are the result of an impasse in negotiations with its largest secured creditor, Wells
11 Fargo Bank. Although Mi Pueblo has not defaulted on any payments in any of its
12 obligations, the demands from the bank to cure certain non-financial covenants could
13 not be met.

14 **B. The Cash Management System**

15 9. In the ordinary course of business, Mi Pueblo maintains an integrated
16 cash-management system that provides well-established processes for the collection,
17 concentration, management, monitoring, and disbursement of funds generated and
18 used in its operations (the "Cash Management System").

19 10. The Cash Management System enables Mi Pueblo to effectively manage
20 and monitor the inflow of receipts and outflow of disbursements from its stores, and
21 accommodates Mi Pueblo's reliance on third-party providers who process customer
22 payments. It is critical that the Cash Management System remain intact to ensure
23 seamless customer experiences and continued collection of revenues for Mi Pueblo's
24 estate.

25 11. The Cash Management System consists of six bank accounts
26 (collectively, the "Bank Accounts"). The accounts include a single master account (the
27 "Main Account") at Wells Fargo Bank ("WFB") where cash is generally concentrated,

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2 and is used to receive incoming payments, deposit checks and make certain electronic
3 and other disbursements in the ordinary course of Mi Pueblo's business.

4 12. As part of their daily operations, Mi Pueblo's stores collect cash, money
5 orders, checks, credit card, debit and electronic benefit transfer ("EBT") payments at the
6 point of sale in the stores (the cash registers). Most personal checks, and 3rd party
7 checks are electronically deposited into the Main Account, with cash from sales
8 deposited into the same account via armored car. Credit card, debit card, and EBT
9 transaction information is sent to the card processors (see discussion below) and the
10 proceeds sent to an account at Union Bank of California ("Union Bank"). ACH Check
11 Information and Coinstar information are processed through TeleCheck and Coinstar,
12 respectively, and the proceeds deposited into the Main Account.

13 13. In the ordinary course of Mi Pueblo's business it partners with MoneyGram
14 Payment Systems, Inc. ("MoneyGram") and with Cha Cha Enterprises, LLC ("Cha Cha")
15 to provide customers with the ability to purchase money orders, wire funds, and make
16 customer utility payments (collectively, "Money Orders") and to cash checks at a
17 separate Customer Service counter at Mi Pueblo stores (the "Customer Service
18 Counter"). Mi Pueblo and MoneyGram are parties to a Master Trust Agreement
19 whereby MoneyGram appointed Mi Pueblo as its agent to provide the MoneyGram
20 services at its stores. Customers purchase the Money Orders at the Customer Service
21 Counter. Mi Pueblo transfers the money to MoneyGram, which pays the Money Order
22 amount at the location directed by the customer. A small commission is earned on each
23 sale. This is paid to Cha Cha, which assumes the risk of items that are returned from
24 the bank (bad checks). Mi Pueblo receives the rest of the transaction proceeds in trust
25 for MoneyGram ("MoneyGram Trust Funds"), which is then transferred through the Main
26 Account and into a segregated account on a daily basis (the "MoneyGram Account").
27 The Customer Service Counter in each store also provides a significant check-cashing
28 service as an accommodation to employees and customers. A small fee is paid to Cha

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2 Cha on third-party checks, as Cha Cha assumes the risk of checks being returned by
3 the banks on which they are drawn. Checks are processed through the WFB main
4 account, but the debits for the bad checks are debited by WFB directly to Cha Cha's
5 account.¹

6 14. Disbursements are made from the Main Account and from the four
7 designated accounts at WFB, described below, that are funded from the Main Account.
8 The major disbursements that are made directly from the Main Account are: bank fees,
9 store currency orders, Fedwire payments to vendors, ACH debits to the account made
10 by certain vendors and principal and interest payments to both WFB and to Cha Cha on
11 outstanding loans. The following designated accounts at WFB are funded from the
12 Main Account: (a) the payroll account which is to fund payroll to Mi Pueblo's employees
13 being paid by check and to its payroll processor for employees being paid via direct
14 deposit; (b) a healthcare account which is used to issue checks to healthcare providers;
15 (c) a payables account which is used to issue checks to corporate vendors; and (d) the
16 MoneyGram account described above. The funds received by Union Bank from credit
17 and debit card and EBT processors are transferred to the Main Account.

18 15. As of the Petition Date, WFB and Union Bank are designated as authorized
19 depositories by the Office of the United States Trustee for the Northern District of
20 California pursuant to the U.S. Trustee Chapter 11 Guidelines for the Northern District
21 of California.

22 16. Mi Pueblo maintains detailed and accurate records of all disbursements and
23 transfers flowing within and outside of the Cash Management System, including all
24 checks that are written on its accounts. The electronic, Web-based services offered by
25 WFB and Union Bank allow Mi Pueblo to easily monitor its disbursement account
26 balances and activity, and to generate reports, hold and release checks, and, with

27 ¹ Mi Pueblo is also filing a motion to allow the payment of all MoneyGram Trust funds.

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2 respect to the WFB accounts, stop payments, transfer funds and send wires and ACH
3 payments.

4 17. Cash Management Systems are complicated and require skill and training in
5 their use and administration. Maintaining the Cash Management System in its current
6 state is crucial to Mi Pueblo's operations in light of the significant volume of cash
7 transactions managed through the Cash Management System every day. Mi Pueblo is
8 familiar with the Cash Management System which enables Mi Pueblo to reconcile,
9 control and monitor its accounts in a seamless, expedient fashion. Any disruption to the
10 Cash Management System would unnecessarily disrupt Mi Pueblo's complex day-to-
11 day operations and thereby cause unnecessary harm to the estate. Mi Pueblo therefore
12 requests that it be allowed to continue the Cash Management System and related
13 historical practices and that its banks be ordered to honor checks and disbursements
14 from the Bank Accounts.

14 **C. Credit Card Merchant Payment System**

15 18. As with any retail grocery markets, many of Mi Pueblo's customers pay for
16 their purchases with various credit cards, bank debit cards and EBT payments. Mi
17 Pueblo, as a community-oriented grocery store, has accepted electronic forms of
18 payment, since the inception of each such form, in an industry where its competitors
19 accept credit cards and debit cards. Its customers shop at Mi Pueblo's stores with the
20 expectation of being able to pay by credit card, debit card or EBT. Turning away
21 unsuspecting customers who are unable to pay with cash would not only result in the
22 direct loss of those sales, but could also upset customers leaving them angry and
23 unsatisfied, damaging goodwill and requiring the restocking of goods that such
24 customer is no longer capable of purchasing. Consequently, any interruption with Mi
25 Pueblo's ability to accept and process credit cards, debit cards and EBT payments,
26 even for a minimal time, would result in lost sales and diminished customer goodwill.

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2 19. Mi Pueblo has various agreements pursuant to which it maintains a system
3 (the "Credit Card Merchant Payment System") which facilitates payments by customers
4 with credit cards, bank debit cards or EBT payments. Mi Pueblo is a party to the "First
5 Data Merchant Services Agreement" (the "First Data Agreement") with First Data
6 Corporation ("First Data") for its MasterCard, Visa, Discover, and debit card transactions
7 and its EBT payments, with customers. Pursuant to the First Data Agreement, credit
8 card, debit card and EBT sales are submitted to First Data, who then processes the
9 sales and submits the appropriate funds to a designated account, less certain fees as
10 set forth in the First Data Agreement. First Data offsets any costs incurred from charge-
11 backs from new receipts.

12 20. Mi Pueblo is also a party to a similar agreement with American Express
13 ("AMEX," collectively with the First Data Agreement the "Payment Processors") for the
14 processing of customer purchases with AMEX credit cards . Sales purchased with
15 AMEX cards are processed by AMEX, who then submits the appropriate funds to Mi
16 Pueblo's designated account. AMEX offsets any costs incurred from chargebacks from
17 new receipts.

18 21. Approximately 40% of Mi Pueblo's aggregate monthly sales transactions are
19 made via credit card, debit card or EBT sales. The processing agreements are critical to
20 Mi Pueblo's ongoing business. Mi Pueblo might be unable to find alternative merchant
21 services similar to those provided by the Payment Processors, and any loss of services
22 from the Payment Processors will cause a deleterious lapse in Mi Pueblo's ability to
23 accept payment.

24 22. Mi Pueblo believes that the fees collected by the Payment Processors are *de*
25 *minimus* in relation to the value the processing agreements bring to Mi Pueblo's overall
26 ability to collect and process payments and transact purchases. As such, maintaining
27 the relationship with the Payment Processors is essential for Mi Pueblo to facilitate
28 sales to its customers. The Payment Processors do not have any significant risk of loss

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2 by continuing their services, as their costs and processing fees are deducted from funds
3 received for each transaction. To the extent that the Payment Processors have not
4 settled all pre-petition card transactions and collected their respective fees related
5 thereto prior to the Petition Date, Mi Pueblo requests authority to allow the Payment
6 Processors to collect pre-petition fees related to pre-petition card transactions settled on
7 behalf of Mi Pueblo.

8 **D. Use of Business Forms.**

9 23. As part of Mi Pueblo's ordinary business, including the complex cash
10 management and credit-card merchant programs described above, Mi Pueblo uses a
11 range of business forms, including letterheads, purchase orders, invoices, and checks
12 (collectively, the "Business Forms"), without reference to its debtor-in-possession status.
13 Creditors and vendors doing business with Mi Pueblo will be aware, pursuant to the
14 notice of the case commencement that will be disseminated in this case in addition to
15 the press release issued by Mi Pueblo, that Mi Pueblo has filed bankruptcy.

16 24. Mi Pueblo must protect and preserve the goodwill with its customers and
17 vendors by maintaining the use of the current Business Forms. In addition, Mi Pueblo
18 already possesses a stock supply of Business Forms which do not state that it is a
19 debtor-in-possession. Revising Mi Pueblo's existing Business Forms would create an
20 unnecessary and expensive burden to the estate. Moreover, the time and expense for
21 such revisions would be disruptive to Mi Pueblo's business operations and would not
22 confer any benefit on those dealing with the company. Mi Pueblo, therefore, requests
23 that it be authorized to continue to use its Business Forms without placing a "debtor-in-
24 possession" label on them.

25 **III. MEMORANDUM OF POINTS AND AUTHORITIES**

26 **A. Cash Management System**

27 25. Bankruptcy Courts treat requests for authority to continue utilizing existing
28 cash management systems as a relatively "simple matter." *In re Baldwin-United Corp.*,

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2 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). While few opinions focus on this issue, some
3 do reference the granting of authority to continue cash management systems. In *In re*
4 *Charter Co.*, 778 F.2d 617 (11th Cir. 1985), for example, the Eleventh Circuit Court of
5 Appeals affirmed a district court decision denying a creditor's motion for leave to appeal
6 the bankruptcy court's cash management order, holding that authorizing Mi Pueblos to
7 utilize their pre-petition "routine cash management system" was "entirely consistent"
8 with applicable provisions of the Bankruptcy Code. *Id.* at 621. *See also In re Voyager*
9 *Express, Inc.*, 2009 Bankr. LEXIS 4598 (Bankr. D. Colo. 2009) (authorizing debtor to
10 continue to use its existing bank account, in connection with a debtor in possession
11 financing motion).

12 26. Section 345(a) of the Bankruptcy Code authorizes deposits of money "as will
13 yield the maximum reasonable net return on such money, taking into account the safety
14 of such deposit or investment" and further provides that "[e]xcept with respect to a
15 deposit or investment that is insured or guaranteed by the United States or by a
16 department, agency, or instrumentality of the United States or backed by the full faith
17 and credit of the United States" a bond or deposit of securities is required from the
18 institution where funds are deposited. 11 U.S.C. § 345(b). Two of Mi Pueblo's Bank
19 Accounts are at WFB and Union Bank, both of which are federally insured banking
20 institutions and are depositories approved by the United States Trustee. [See Federal
21 Deposit Insurance Corporation website and searchable database at:
22 <http://www2.fdic.gov/IDASP/main.asp>; United States Trustee Region 17, List of
23 Authorized Depositories, Northern District of California, First Quarter 2013].

24 27. The Region 17 United States Trustee Guidelines (the "UST Guidelines")
25 generally require that a debtor open a general account, a payroll account and a tax
26 account, and other such accounts necessary for its operations. UST Guidelines, Sec.
27 4.4.6.(2). Mi Pueblo currently has, and seeks to maintain, a general account (the Main
28 Account), its payroll account, payables account, the MoneyGram account, and the

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2 account with Union Bank for managing credit card deposits. Mi Pueblo is in control of all
3 of these accounts, controls disbursements and is able to prevent against the unintended
4 payment of any pre-petition obligations. Accordingly, Mi Pueblo believes that its Bank
5 Accounts are in compliance with section 345.

6 28. Mi Pueblo respectfully submits that closing the existing accounts and opening
7 new ones would result in needless costs in both time and money with no discernible
8 benefit to the estate. For example, closing the payroll account and opening another will
9 provide no benefit and only be an additional burden to Mi Pueblo. No disbursements are
10 made out of the payroll account except for payroll. Similarly, the MoneyGram Account is
11 exclusively for MoneyGram trust funds, which are passed through from the customers to
12 MoneyGram. Adding "debtor-in-possession" to the name of the account would serve no
13 purpose.

14 29. In addition, Mi Pueblo does not presently maintain an account for tax
15 purposes. Instead, Mi Pueblo monitors and processes funds for payment of taxes
16 through its Cash Management System to assure that taxes are paid appropriately.²
17 Requiring Mi Pueblo to open an additional tax account would require Mi Pueblo to
18 revise its Cash Management System and compel it to devote more personnel time to
19 maintaining the new account.

20 30. As described above, the use of the Bank Accounts and Cash Management
21 System allows Mi Pueblo to monitor and control its revenue from each store and its
22 disbursements. Closing the current accounts and opening new ones would be extremely
23 burdensome, especially at a time when Mi Pueblo's accounting personnel are already

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26 Separately Mi Pueblo will file its Motion for Order Authorizing Payment of Sales, Use and Other Taxes
27 Accruing Pre-Petition in the Ordinary Course of Business seeking *inter alia*, authorization to pay
28 outstanding sales, use and similar taxes which accrued pre-petition but were not yet due and owing or
were not paid in full as of the Petition Date, to certain taxing authorities in the ordinary course of business.

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2 addressing the numerous matters related to the commencement of the Bankruptcy
3 Case.

4 **B. Credit Card Merchant Payment System**

5 31. To facilitate transactions with its customers, Debtor seeks authority (a) to
6 continue the Credit Card Merchant Payment System, including its business practices
7 with the Payment Processors, and (b) to pay the Payment Processors any pre-petition
8 fees attributable to pre-petition card transactions not collected prior to the Petition Date.
9 Mi Pueblo's Processing Agreements with the Payment Processors, and the fees
10 associated therewith, are typical of agreements with other merchants that honor and
11 process customer credit cards and debit cards. Mi Pueblo believes that the Processing
12 Agreements do not constitute "debt financing" or "financial accommodations" as
13 contemplated by section 365(c) of the Bankruptcy Code (which provides for a right to
14 terminate such contracts by the non-debtor party) and that in fact, such agreements are
15 assumable under section 365. *See e.g., In re Thomas B. Hamilton Co.*, 969 F.2d. 1013
16 (11th Cir. 1992) ("credit card merchant agreements . . . are not contracts to extend
17 financial accommodations within the meaning of §§ 365(c)(2) and 365(e)(2)(B); that is,
18 we conclude that a contract is not one to extend financial accommodations when it
19 involves an agreement for a bank to purchase credit card sales drafts from a merchant
20 with recourse against the merchant for rejected sales); *In re United Airlines, Inc.*, 368
21 F.3d 720 (7th Cir. 2004) ("we hold that a trustee in bankruptcy, or a debtor in
22 possession, may assume a credit-card-processing agreement"); *see also In re AC*
23 *Direct, Inc.*, 2010 Bankr. LEXIS 381 (Bankr. M.D. Fla. 2010) (where court issued order
24 to show cause regarding sanctions for cancellation of merchant account contract).

25 32. While Mi Pueblo is not seeking to assume or reject the Processing
26 Agreements at this time, it urges the Court to allow it to continue with its business
27 practices with the Payment Processors under the Processing Agreements and to
28 maintain its Credit Card Merchant Payment System for its customers. A substantial

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2 amount of customer purchases are made with credit cards or bank debit cards.
3 Maintaining the business practices with the Payment Processors not only establishes a
4 sustained cash flow mechanism for Mi Pueblo's revenues but is essential to the overall
5 operations of Mi Pueblo's business. Unless Mi Pueblo is allowed to continue with its
6 business practices with the Payment Processors, its ability to collect payment from
7 customers will be severely hindered. Therefore, it is in the estate's best interests that Mi
8 Pueblo maintain the Credit Card Merchant Payment System and pay the Payment
9 Processors any uncollected pre-petition fees attributable to pre-petition card
10 transactions.

11 **C. Business Forms**

12 33. In Mi Pueblo's business judgment, continuing to use its present Business
13 forms will reduce costs to the estate by eliminating the unnecessary and expensive
14 burden of reproducing the Business Forms, especially since the company already has a
15 stock supply of the forms. Moreover, keeping the current Business Forms will allow Mi
16 Pueblo to protect and preserve goodwill with its customers and vendors. As set forth
17 above, customers and vendors will be aware of Mi Pueblo's bankruptcy as a result of
18 general publicity and by Mi Pueblo's issuing a press release. As such Mi Pueblo
19 submits that it should be allowed to continue to use its current Business Forms without
20 reference to "debtor-in-possession."

21 **D. The Requested Relief Is In the Ordinary Course.**

22 34. Section 363 of the Bankruptcy Code provides that only transactions outside
23 the ordinary course of business require court approval, while transactions within the
24 ordinary course of business may be entered into by debtors without notice or court
25 approval. 11 U.S.C. § 363(b)(1).

26 35. Through this Cash Management Motion, Mi Pueblo requests authority to
27 continue to employ its Cash Management System, including retaining the Bank
28 Accounts, providing the service at the Customer Service Counters with MoneyGram and

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2 Cha Cha, and using its Credit Card Merchant Payment System, including the
3 Processing Agreements. The practices encompassed by these systems are well
4 established. Mi Pueblo has maintained a relationship with its banks and the Payment
5 Processors within the Cash Management System for many years. Moreover, Mi Pueblo
6 believes that practices similar to its Cash Management System and Credit Card
7 Merchant Payment System are standard to within the retail grocery industry, and that
8 the customer services for money orders, transfers, and check cashing are common in
9 the ethnic grocery industry, and that they are essential to operating a multiple-store
10 retail grocery chain. Consequently, the relief requested herein is in the ordinary course
11 of Mi Pueblo's business and is therefore authorized pursuant to Section 363(c).

12 36. While the Cash Management Motion requests authorization to allow the
13 Payment Processors to collect any pre-petition fees attributable to pre-petition card
14 transactions not collected prior to the Petition Date, Mi Pueblo believes that any such
15 pre-petition amounts are *de minimus* in relation to the value to the estate of continuing
16 the Credit Card Merchant Payment System without interruption. Furthermore, as
17 described above, First Data, and AMEX each may offset any fees owed to them against
18 collected receipts. Accordingly, allowing the business practices to continue with the
19 Payment Processors and allowing Mi Pueblo to continue to allow the Payment
20 Processors to collect any pre-petition fees on pre-petition transactions not yet settled
21 will not prejudice the rights of Mi Pueblo's creditors nor will it be detrimental to the
22 estate.

23 **F. The Relief Requested Is Within Mi Pueblo's Reasonable Business**
24 **Judgment.**

25 37. To the extent any practices within the Cash Management System and the
26 Credit Card Merchant Payment System constitute transactions outside of the "ordinary
27 course of business," they may be approved as within the reasonable business judgment
28 of Mi Pueblo. Sections 1107 and 1108 authorize a debtor in possession to operate its
business as a trustee in a chapter 11 case. And courts afford broad deference to the

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2 reasonable business judgment of debtor in possession. *Bennett v. Williams*, 892 F.2d.
3 822, 824 (9th Cir. 1989).

4 38. Here, Mi Pueblo seeks to maintain its established, streamlined Cash
5 Management System and Credit Card Merchant Payment System. These systems will
6 enable Mi Pueblo to operate and monitor its finances, disbursements, receipts and tax
7 obligations accurately, to process transactions efficiently, and to offer its customers the
8 ability to continue purchases with credit cards, debit cards and/or EBT payments. As a
9 result, Mi Pueblo has determined in its business judgment that it is in the best interests
10 of the estate to continue its Cash Management System and Credit Card Merchant
11 Payment System.

12 **G. Related Relief and Bankruptcy Rules 6003 and 6004**

13 39. In addition, Mi Pueblo submits that because the relief requested in this
14 Motion is necessary to avoid immediate and irreparable harm to Mi Pueblo for the
15 reasons set forth herein, Rule 6003 of the Federal Rules of Bankruptcy Procedure (the
16 “Bankruptcy Rules”) has been satisfied.

17 40. To successfully implement the foregoing, Mi Pueblo seeks a waiver of the
18 notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay under
19 Bankruptcy Rule 6004(h).

20 41. Without the Cash Management System and the Credit Card Merchant
21 Payment System, disbursements and customer sales will be delayed, and Mi Pueblo
22 will be unable to track receipts and transactions effectively. Late payments may cause
23 suppliers to withhold necessary goods and services.

24 42. Moreover, as set forth in the Budget, Mi Pueblo will need to pay necessary
25 and reasonable expenses for its continued operations, including, but not limited to,
26 payroll, utility deposits and payments to vendors. Failure to make these payments will
27 result in immediate and irreparable harm to Mi Pueblo. Mi Pueblo must be able to pay
28 its employees and vendors in the ordinary course of business to continue operations

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2 and maintain the going concern value of its business in order to maximize its assets for
3 the benefit of its creditors. By a separate motion, Mi Pueblo will seek an order using
4 cash collateral for these expenses, but seeks relief under this Motion to ensure
5 continuity of operations.

6 **WHEREFORE**, Mi Pueblo prays that this Court enter its order as follows:

7
8 1. Authorizing, but not directing, Mi Pueblo to continue to utilize its pre-petition
9 Cash Management System, including the use of its existing Bank Accounts, in the
10 ordinary course of its business;

11 2. Requiring Mi Pueblo's banks to continue to honor checks and disbursements
12 from the Bank Accounts;

13 3. Authorizing Mi Pueblo to continue its business practices with the Payment
14 Processors pursuant to the Processing Agreements and to maintain its pre-petition
15 Credit Card Merchant Payment System;

16 4. Authorizing Mi Pueblo to pay the Payment Processors any uncollected pre-
17 petition fees attributable to pre-petition card transactions;

18 5. Authorizing Mi Pueblo to continue to use its existing Business forms without
19 reference to its debtor-in-possession status;

20 6. Finding that notice is adequate under the circumstances under the case under
21 Bankruptcy Rule 6004(a);

22 7. Waiving the ten-day stay requirement, to the extent applicable, under
23 Bankruptcy Rule 6004(h); and

24 8. For such other and further relief as the Court deems just and proper.

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27 **MOTION FOR ORDER AUTHORIZING CASH-MANAGEMENT AND CREDIT CARD MERCHANT**
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2 Dated: July 22, 2013

BINDER & MALTER, LLP

3 By: /s/ Wendy W. Smith
4 Wendy W. Smith

5 Proposed Attorneys for Debtor and Debtor-in-
6 possession TECHNOLOGY PROPERTIES
7 LIMITED LLC
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27 MOTION FOR ORDER AUTHORIZING CASH-MANAGEMENT AND CREDIT CARD MERCHANT
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